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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,331	02/06/2004	Ferdinand Schermel		4510
7590	10/06/2005		EXAMINER	
FERDINAND SCHERMEL RR #10 7741 CHURCHVILLE RD BRAMPTON, ON LGV 3N2 CANADA			SINGH, SUNIL	
			ART UNIT	PAPER NUMBER
			3673	
				DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/772,331	SCHERMEL, FERDINAND	
	Examiner Sunil Singh	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 24-48 is/are pending in the application.
 - 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 24-48 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/13/05</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 24-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Wipo document (WO 97/30614) or Wipo (EP 1197170).

Both Wipo documents disclose a multi-position reclining bed comprising (see disclosures) a support including plurality of sections including a back section, a buttocks section, thigh section, and a calves section, the support configured to carry a mattress thereon; a track coupled to the support; a linear actuator coupled to the support; wherein the back section is coupled to the track section and configured to move an end portion thereof vertically when the linear actuator is activated; and wherein the thigh section and calves section **can be** configured to form a single acting rigid coplanar leg section that reclines pivotally below a horizontal plane of the buttocks section in a downward direction pivotally about an adjoining edge with the buttocks section.

It should be noted that the term “can be” means an optional limitation and as such the prior art anticipates such claims without positively having the “can be” structure.

3. Claims 45-48 are rejected under 35 U.S.C. 102(b) as being anticipated by German document '045.

German document disclose a multi-position reclining bed comprising a support including plurality of sections including a back section, a buttocks section, a thigh section, and a calves section, the support configured to carry a mattress thereon; a track coupled to the support; a linear actuator coupled to the support and wherein the thigh section and calves section **can be** configured to form a single acting rigid coplanar leg section that reclines pivotally below a horizontal plane of the buttocks section in a downward direction pivotally about an adjoining edge with the buttocks section.

It should be noted that the term “can be” means an optional limitation and as such the prior art anticipates such claims without positively having the “can be” structure.

In the event applicant does not agree with above rejection; then the following rejection(s) apply.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 24-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Wipo document (WO 97/30614) or Wipo (EP 1197170) in view of German document '045.

Wipo documents disclose the invention substantially as claimed. However, they lack thigh section and calves section configured to form a single acting rigid coplanar leg section that reclines pivotally below a horizontal plane of the buttocks section in a downward direction pivotally about an adjoining edge with the buttocks section.

German document teaches thigh section and calves section configured to form a single acting rigid coplanar leg section that reclines pivotally below a horizontal plane of the buttocks section in a downward direction pivotally about an adjoining edge with the buttocks section. It would have been considered obvious to one of ordinary skill in the art to modify either Wipo documents to include thigh/calve arrangement as taught by German document in order to aid handicap people from getting in/out of bed.

Response to Arguments

6. Applicant's arguments with respect to claims 24-48 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (571) 272-7051. The examiner can normally be reached on Monday through Friday 10:30 AM - 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (571) 272-7049. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3673

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sunil Singh
Primary Examiner
Art Unit 3673



SS

9/26/05